



POLICE DEPARTMENT

September 21, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Majer Saleh  
Tax Registry No. 929110  
Fleet Services Division  
Disciplinary Case No. 2014-11186  
-----

The above-named member of the Department appeared before me on June 10, June 11, June 17 and June 18, 2015, charged with the following:

1. Said Sergeant Majer Saleh, while assigned to the 34th Precinct, on or about August 12, 2012, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that, said Sergeant used his position as a Member of Service, to prevent Person A, the victim of an assault, from proceeding in a criminal case against her assailant.

P.G. 203-10, Page 1, Paragraph 5 - Prohibited Conduct  
Penal Law Section 195.00(1) - Official Misconduct

2. Said Sergeant Majer Saleh, while assigned as indicated above, on or about January 15, 2014, made false statements during an official Department interview pursuant to Patrol Guide 206-13, when questioned about the facts and circumstances surrounding why he was at the hospital speaking to the victim, Person A.

P.G. 203-08, Page 1, Paragraph 1 - Making False Statements

3. Said Sergeant Majer Saleh, while assigned as indicated above, on or about August 12, 2012, while on-duty, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that, said Sergeant interfered with an investigation conducted by the Department and New York County District Attorney's Office to wit, said Sergeant improperly spoke with Person A, the victim of an assault, in an attempt to dissuade her cooperation in a criminal matter.

P.G. 203-10, Page 1, Paragraph 5 - Prohibited Conduct

4. Said Sergeant Majer Saleh, assigned as indicated above, on or about August 12, 2012, while on-duty, failed to make complete entries in his Department issued memobook.

P.G. 212-08, Page 1, Paragraph 1c - Activity Logs

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Roger Blank, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent is found Guilty of all charges.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Person A, Police Officer Carlos Fernandez, Police Officer Walter Valentin, Sergeant Carmen Mateo, Sergeant Jennifer Sprolling and Police Officer William Beattie as witnesses.

#### Respondent's Case

Respondent called Detective Ruben Cotto and Inspector Barry Buzzetti as witnesses. Respondent testified on his own behalf.

### FINDINGS AND ANALYSIS

The instant matter arises out of allegations that Respondent, without a proper Department purpose, visited a domestic violence complainant in the hospital in an attempt to dissuade her cooperation in pursuing criminal charges against her husband, an auxiliary police officer in Respondent's precinct. Respondent is also charged with failing



to make proper Activity Log entries and making false statements at an official Department interview regarding this incident.

The following facts are undisputed. Person A was assaulted by her husband, Person B, an auxiliary police officer in the 34 Precinct, in their apartment on the afternoon of August 12, 2012. Person B accused his wife of cheating and hit her repeatedly, ultimately banging her head into the bathroom floor, causing her to black out for a time. (Tr. 14-17). For nearly two hours, he refused to let her seek medical attention but ultimately allowed her to leave the apartment, directing her to say she had fallen outside on a bench after being hit with a basketball by teenagers. Person A took a cab to Allen Pavilion Hospital. (Tr. 18, 39). There, she told the receptionist that she needed help to get her children out of her home. Hospital security then called police.

Person A was admitted to the hospital and administered a painkiller. (Tr. 44). Police Officers Walter Valentin and William Beattie responded to her room. (Tr. 19). She asserted, in English, that she wanted her children and would not answer questions until she was reunited with them. Eventually, she explained to the officers that her husband, an auxiliary police officer, had assaulted her and refused to let her take her children from the home. (Tr. 20). Because of her husband's position as an auxiliary officer in the same precinct, Valentin notified the patrol supervisor, Sergeant Carmen Mateo, before proceeding further. Person A explained that this made no sense to her and she wondered if the officers were trying to protect Person B because he was an auxiliary police officer. (Tr. 68).

Mateo arrived and explained to her that the delay was just standard procedure in dealing with an auxiliary officer and directed the arrest of Person B. (Tr. 21, 162-64). Valentin and Mateo went to the [REDACTED] residence to effectuate the arrest while Beattie remained to guard Person A. (Tr. 21, 98). Mateo and Valentin located Person B at the residence, placed him under arrest and took the two [REDACTED] children to the precinct. (Tr. 99-100, 163-65).

Around the same time as the assailant was brought into the precinct, Respondent had arrived to begin the third platoon. Mateo, as the outgoing patrol supervisor, advised him that an auxiliary police officer had been arrested. (Tr. 165-66). Respondent observed Person B cuffed in front of the cells, appearing frantic. (Tr. 319). Person B told Respondent he was being accused of beating his wife and Respondent told him to "relax, calm down." (Tr. 321). Respondent then asked Valentin some questions regarding the arrest. (Tr. 101, 323).

Shortly thereafter, Respondent had his driver take him to the hospital to speak with the complainant. (Tr. 329). Respondent's driver remained in the car and Beattie remained outside the door to the room while Respondent entered the room and greeted Person A in [REDACTED] (Tr. 24, 84, 244, 329). They spoke for approximately ten to twenty minutes, after which Respondent resumed patrol. (Tr. 244, 335, 339, 362). In dispute are Respondent's reasons for going to visit Person A and the words he said to her, specifically whether he attempted to persuade her not to go forward with criminal charges against her husband.

Person A testified that Respondent entered her room in uniform and asked her nurse to leave. (Tr. 24, 27). She remembered that the door was closed and Beattie



remained outside her room. (Tr. 52). Respondent asked if she was [REDACTED] Person A explained that most people referred to her husband by his first name, [REDACTED], so hearing his middle name, [REDACTED] made her sure that Respondent was familiar with her husband. (Tr. 25). She stated that her husband had previously told her about meeting an officer of [REDACTED] descent named [REDACTED] and that he spoke highly of him on a few occasions. (Tr. 26). She contended that Respondent insisted they speak [REDACTED] even when she stated that her [REDACTED] dialect was difficult to understand. (Tr. 28).

She further testified that Respondent told her that her husband had asked him to come speak with her and then asked, "Why did you cheat on him? Why did you? Why would you mess up a home, go for a man if you already have a man? Why would you mess up your family and children for a man?" (Tr. 28). She asserted that she became uncomfortable at this point, telling Respondent she had never cheated. (Tr. 29). She claimed Respondent then asked her to swear [REDACTED] that she had not cheated. She recounted that she told Respondent that even if she had cheated, she did not deserve to be beaten. She claimed that he responded, "Well, you know we are [REDACTED] ...If he hits you, that means he loves you and cares about you. . . ." She contended that Respondent told her to stop lying and not to "play" with American law, warning that her children could be taken from her if she was lying and that she could even be deported. (Tr. 30).

Finally, she asserted that although Respondent did not instruct her specifically with regard to the charges, he reminded her that women have to "sacrifice," and told her to just say that she fell into a bench and get back to her husband and family. (Tr. 31). She explained that she "felt scared" as he tried "to convince me to just like- - say that I was lying." (Tr. 33-34). She contended that Respondent asked her no questions about



what had happened to her. (Tr. 69). Although he did not expressly tell her that she should drop the case, she perceived this to be his objective. (Tr. 76-77).

Conversely, Respondent testified that he went to the hospital for two reasons — (i) Valentin, whom he characterized as a “screw-up” had told him that there was a language barrier with Person A and he had barely gotten enough information to make a report and (ii) his Commanding Officer, Inspector Barry Buzzetti, had asked him to go and get more information because the arrest involved an auxiliary officer. (Tr. 329, 358-60).

Respondent recalled that they spoke mostly about services she would get and spoke [REDACTED] and English. (Tr. 329, 334, 361). He claimed that he advised her not to go into a shelter as there would be a protective order and her apartment locks could be changed but recalled that she was insistent on a shelter. (Tr. 334). Person A, however, did not testify to discussing housing with Respondent although she recalled speaking to a nurse and social worker regarding finding a safe place to take her children. (Tr. 33-35). Respondent confirmed that the complainant spoke English and asserted that Valentin had lied to him about the language barrier. (Tr. 353, 364).

Respondent further denied saying anything about men being permitted to abuse their wives [REDACTED]. (Tr. 330, 336). He asserted that he did not try to get her to drop charges, explaining that “blocking [her] from getting justice like this, that’s a bigger sin on me than . . . even her husband hitting her” and noting, “I’ve made over 150 domestic violence collars; I’ve never told anybody not to pursue a case.” (*Id.*). He further denied asking her to swear to [REDACTED] or making any threats about her children. (Tr.



333). Respondent contended he did not bring up the possibility of Person A cheating on her husband. (Tr. 360-61).

Additional testimony about the events of August 12, 2012 were provided by Police Officers Beattie and Valentin, Sergeant Mateo and Inspector Buzzetti. Mateo and Beattie both testified that Person A spoke English and that she did not have any problems communicating with or understanding them. (Tr. 162-63, 240, 245-46). Mateo further recounted that although she had advised Respondent of the incident, she never asked him to assist with the arrest or go to the hospital to speak with Person A. (Tr. 166-67). To her knowledge, Respondent never asked for preferential treatment for Person B. (Tr. 179, 184-85).

Valentin agreed that Person A spoke English and had no problem communicating with him. (Tr. 94, 96). Like Mateo, he testified that he never asked Respondent to assist with the arrest or speak with the victim. (Tr. 102). He claimed that Person B had told him that he was friends with Respondent. (Tr. 105). He acquiesced that Respondent never asked him to "go easy" on Person B. (Tr. 112).

Valentin further explained that he had been disciplined on multiple occasions in the past and Respondent had given him poor evaluations. (Tr. 115-16). He admitted that he does not generally "see eye-to eye" with Respondent and agreed that he is "not a fan" of him. (Tr. 136). However, he denied Respondent's counsels questions as to whether he ever told other members of the command that Respondent would be disciplined in connection with this incident or bragged about "getting" or "jamming up" a boss. (Tr. 117-18, 126). Such allegations were uncorroborated although Officer Beattie acquiesced that Valentin had asked his opinion about "jamming up a boss" but did not specify which



boss. (Tr. 252-255). Beattie further noted there were many people at the command that Valentin did not like. (Tr. 253).

Inspector Buzzetti, testifying on Respondent's behalf, asserted that he sent Respondent to the hospital to "get an idea of what was going on." (Tr. 277-78). He explained that after being notified of the arrest, he was "not comfortable" with the "amount of details" he was given. When asked on cross examination as to exactly what information he felt was lacking, Buzzetti simply stated that because an auxiliary police officer was involved, he wanted a "complete recounting of what went on, how it happened." (Tr. 287-88, 299-300). Respondent, he recalled, was not otherwise engaged that day, had previous experience as a domestic violence officer and spoke [REDACTED] so Buzzetti believed that he was an ideal choice to investigate further. (Tr. 278-79, 288, 303). When asked how he knew that the complainant spoke [REDACTED], he responded "I think from the name. I might have asked something, you know, 'What are they?' -- because it was an odd -- an odd name." (Tr. 306). Buzzetti did not document that he sent Respondent to the hospital. (Tr. 306). Neither Respondent nor Buzzetti testified to Respondent reporting back to him and providing him with additional details after returning from the hospital.

Sergeant Jennifer Sprolling provided details regarding the subsequent IAB investigation. In December 2012, she became aware of an allegation, made by the Manhattan District Attorney's Office, Official Corruption Unit, that Respondent had engaged in witness tampering by speaking with Person A at the hospital and trying to persuade her to drop the charges against her husband. (Tr. 189). She testified that Respondent stated "numerous times" at a GO-15 interview that he had responded to the



hospital due to his being advised that there was a language barrier. (Tr. 195). Sprolling determined this statement to be false “because after interviewing the complainant and other witnesses and subject officers, the complainant spoke fluent English.” (Tr. 195-96). She explained that this determination led to the additional allegation of making false statements at an official Department interview. (Tr. 196, 203).

### **Specification 2**

Respondent stands charged with making false statements during an official Department interview as to the facts and circumstances surrounding why he was at the hospital speaking to Person A. To establish a false statement violation, the Advocate must demonstrate that Respondent intentionally misrepresented certain facts in order to mislead or deceive his superiors. As noted above, Respondent asserted that he went to the hospital for two reasons—(i) because Valentin told him there was a language barrier, and (ii) because Inspector Buzzetti had directed him to speak with the complainant and get more information about the assault. For the following reasons, I do not find this testimony credible.

Respondent contends that his presence was needed because there was a language barrier. However, the three officers who originally responded to the hospital, Valentin, Mateo and Beattie, have consistently maintained and testified at trial that there was no language barrier and that Person A was able to communicate without issue. Respondent, acquiescing that no language barrier existed, through his counsel, alleged that Valentin lied to him about the language barrier to cover up his own deficient investigation. (Tr. 397-99). In support of this assertion, Respondent further theorized



that Valentin harbors a personal bias against him as he has been disciplined on multiple occasions and gave him low evaluations when he applied to the Emergency Services Unit. (Tr. 325-26, 394, 399). Respondent admitted that he did not, however, confront Valentin about the lack of language barrier when he returned from the hospital. (Tr. 364-65).

This tribunal finds it difficult to believe that Valentin would lie about a language barrier, knowing that he could easily be caught in a lie if Respondent spoke to the complainant or the other two officers who spoke with Person A without issue. Given that Valentin had been disciplined in the past on multiple occasions (Tr. 115-16), it makes little sense that Valentin would take that risk. Further, Respondent's counsel's argument that Valentin made up a fictitious language barrier in trying to cover up a deficient investigation is without basis. (Tr. 383-84). Respondent agreed that no complaint report or domestic violence report had been prepared at the time Valentin allegedly told him about a language barrier so allegations of a deficient investigation would have been hugely premature.

Moreover, Mateo, who also spoke to the complainant and to Respondent about the incident prior to his going to the hospital, did not report any language barrier to Respondent. If crucial information was missing due to a language barrier, it would logically follow that the outgoing patrol supervisor (Mateo) would inform an incoming patrol supervisor (Respondent) of same so that appropriate follow-up steps could be taken. That did not happen. Finally, there is no documentation of Respondent going to the hospital to provide translation or to speak with the complainant in her native language in Respondent's Activity Log or anywhere else. All of this taken together leads this court



to believe that it is more likely than not that the purported language barrier is a fiction created by Respondent after IAB began investigating Person A's allegations. Because the evidence shows that Respondent stated numerous times at his January 15, 2014 Department interview (Department's Exhibit ("DX") 1) that he was advised there was a language barrier and because I have found that statement to be false, Respondent is Guilty of Specification 2.

I further discredit the testimony that Inspector Buzzetti directed Respondent to go to the hospital and speak with Person A for the simple reason that prior to trial, throughout investigations by the Manhattan DA and IAB, Respondent did not, at any point, state or even suggest that he was sent to the hospital on order of Buzzetti or any other supervisor. Respondent, in January 2014, was asked multiple times at his official Department interview his reason for visiting Person A in the hospital. During that interview, Respondent stated at least six times that he went to the hospital due to Valentin telling him there was a language barrier, even stating he would not have responded to the hospital had Valentin not told him there was a language barrier and that his "sole purpose" for going to the hospital was his belief that there was a language barrier. (DX 1 at pp. 5, 10, 14-17, 20-21, 23).

It defies logic that Respondent would make such statements that the purported language barrier was his "sole" reason for going to the hospital if he had, in fact, been directed to go there by a boss, thereby giving him a second reason for being present. Moreover, it strains credulity that Respondent, who was the subject of serious allegations and was told during the course of his interview with IAB investigators that they believed he was "impeding [the] investigation and /or providing false testimony" about the



language barrier, would not take the opportunity to mention that he was sent to the hospital by a supervisor when explicitly given the chance to clarify his reasons for being at the hospital at the end of the interview. (DX 1 at p.26). Respondent's statement that he did not mention Buzzetti because he could not remember exactly which supervisor sent him and did not want to "throw around" names is unpersuasive. (Tr. 336). At the very least, Respondent could have told IAB that he was sent there by a "boss" or "supervisor" and that he could not remember the specific person over a year later, thereby giving IAB an opportunity to look into the veracity of that statement. Instead, Respondent made no mention of any supervisor directives until this trial, a glaring omission that cannot be ignored by this tribunal.

The corroboration of Respondent's testimony by Buzzetti also carries little weight.<sup>1</sup> There is no documentation supporting Buzzetti's assertion that he sent Respondent to the hospital. The reasons for which he claimed to send Respondent to the hospital were exceedingly vague even when Buzzetti was asked to explain on cross-examination. Moreover, Buzzetti apparently did not, when Respondent was investigated or modified regarding this incident, take any steps to make it known that Respondent went to the hospital on his orders until his testimony at this trial. All of this, taken together with Buzzetti's long working relationship with Respondent and stated respect for him (Tr. 273-74), leads this tribunal to discredit Buzzetti's recollection on the stand that he sent Respondent to the hospital.

### **Specifications 1, 3**

---

<sup>1</sup>In an effort to ensure that the Police Commissioner has a complete record regarding the instant matter, I am attaching documentation as to the duty status and pending Charges and Specifications against Inspector Buzzetti. Counsel for both parties were informed of my intention to provide this information via letter dated June 24, 2015. The parties were given the opportunity to comment and/or reopen the trial record as to this limited issue. The parties submitted comments but declined to open the record.



The allegations set forth in Specifications 1 and 3 are serious ones directly related to Respondent's position as a Uniformed Member of the Service. Respondent stands charged with (i) using his position as a Member of the Service to prevent a domestic assault complainant from proceeding in a criminal case against her husband, which constitutes criminal misconduct under NY Penal Law 195.00 [1], and (ii) interfering with a Department investigation by improperly speaking with a complainant in an effort to persuade her not to cooperate in a criminal matter. The Department must prove, by a preponderance of the credible evidence, that Respondent is guilty of said offenses. Having carefully examined the evidence and testimony, I find that the Department has done so and Respondent is therefore found Guilty of Specifications 1 and 3.

Only Person A and Respondent know exactly what was said during the course of their conversation. The accounts they provided for this tribunal are strikingly different. Few things are more difficult for a trier of fact than discerning the truth where witnesses provide differing accounts on key factual issues. When this occurs, the factfinder may take into account a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness accounts are logical and comport with common sense and general human experience. Having considered the testimony with these factors, I credit the testimony of Person A.

At the outset of this analysis, I note that Person A was a credible witness with no discernable motive to fabricate her story. She apparently has no pending civil lawsuit



and there is no evidence that she knew Respondent prior to this or had any established bias against him. She expressed palpable fear that testifying might somehow make her location known to her estranged husband. (Tr. 3, 70, 73). Despite this fear, she came before this tribunal and provided detailed, specific testimony about what was undoubtedly an extraordinarily painful ordeal. As she seemingly had nothing to gain from testifying, I find that the only plausible reason for her to be inclined to do so is that she is telling the truth—that Respondent came to her hospital room, in uniform, told her that she was unfamiliar with American law and culture, told her that her husband loved her, told her that her children could be taken if she was lying and/or cheating, and told her to say that she simply fell down and go back to her family.

I also found that Person A did not embellish her testimony. She candidly stated both in this forum and to IAB investigators that Respondent never expressly spoke about the charges and never told her to drop them or not proceed with the case. (Tr. 56, 211). This is a factor that also supports her credibility.

It is the position of Respondent's counsel that such testimony means Respondent therefore cannot be found guilty of attempting to dissuade her from proceeding in a criminal case. (Tr. 379). That is not so. She further testified that Respondent told her she could lose her children if she lied about cheating and that she should just say that she fell on a bench and go back to her family. (Tr. 29-32). She convincingly explained that she "felt scared," like Respondent was "trying to convince me to just like- - say that I was lying" and perceived that he wanted her to not proceed with criminal charges. (Tr. 33-34, 54, 76). It is clear to this tribunal that the conversation, even if there was no express mention of "dropping charges" or "forgetting" the case, was an effort to try to coerce



Person A into refusing to cooperate with the ongoing investigation and resultant criminal proceeding.

I reject Respondent's counsel's assertion that because Person A was likely distraught and administered a painkiller (Tr. 44), her perception of the conversation is therefore not credible. This is speculation. There is no dispute that Person A had been through a terrible ordeal and was in pain. However, she spoke to three officers about what had happened to her. None of those officers testified to her being "out of it," or anything of the sort. In fact, they testified that there were no issues communicating. Even Respondent merely testified that she was distraught, never stating that she appeared incoherent or medicated or anything remotely like that. Further, Person A was able to convey that she did not want to go back to her home and that she wanted to speak to a social worker about her reasons for wanting to secure safe housing even with her husband arrested. (Tr. 33-35). Despite the painkiller and her injuries, she left the hospital and regained custody of her children the same evening. (Tr. 35).

As such, I find there is no evidence to contradict Person A's testimony that she comprehended everything that Respondent said to her. (Tr. 65). I also find that the fact that she did not recount this conversation to Beattie or hospital social workers immediately, as pointed out by Respondent's counsel, is not hugely significant. (Tr. 387-88). It is both plausible and logical that, under the circumstances, her focus would be on attending first to this family emergency by getting to a safe place with her children and recovering from injury, and not on immediately complaining about Respondent's conduct or words.



I am also not persuaded by Respondent's counsel's argument that Person A made these allegations because she believed the police were "with her husband," an auxiliary officer, and therefore incorrectly perceived they wanted her to drop the charges. (Tr. 382-85, 400-01). Person A has made extremely detailed allegations only as to a specific conversation with Respondent. Her testimony as to that conversation is far more specific and nuanced than a general belief that Respondent wanted her to drop the charges because he and her husband worked in the same precinct or even because she was aware that Respondent and her husband might have had a few brief, friendly conversations in the precinct. There is no evidence that she harbors any ill will or mistrust toward the Department or the 34 Precinct. For these reasons, counsel's argument as to this point fails.

Having considered the testimony, motives and potential biases of Person A, the court next looks to Respondent. Unlike Person A, Respondent's personal and professional interests in the outcome of this case are significant. The charges are serious and the Department seeks dismissal. Moreover, even if he were not dismissed, a guilty verdict would taint the otherwise excellent reputation he has built as a 14-year member of the service. For these reasons, his motive to testify in a manner that absolves him of any wrongdoing is great. While I acknowledge that Respondent has consistently maintained that he went to the hospital to help with a language barrier, which would ordinarily indicate credibility, his assertion that Buzzetti directed him to go to the hospital is not consistent at all with his insistence at his Department interview that the language barrier was his "sole" reason for going to the hospital.



As to what transpired at the hospital, Respondent, after admitting that he spoke with an upset Person B prior to going to the hospital, did not say a great deal about the nature of his conversation with Person A. (Tr. 320-31 ). He denied her allegations that he asked her if she had cheated, that he condoned abusive relationships in their culture and further denied threats involving her children. (Tr. 330, 333, 360-61). He recalled that she told him that her husband had hit her head against the floor and they then spoke about the "services" she would get and that she was insistent on going to a shelter. He contended that Person A was "not at all" hostile toward him. (Tr. 334, 360). Finally, he denied ever trying to influence her with regard to the charges. (Tr. 333-34).

Given the conflicting accounts, determining an outcome on these two charges essentially requires making a determination of which witness the court deems more believable. Respondent's testimony as to why he went to the hospital has been discredited for reasons outlined above. Having already determined that he provided fictitious testimony to both IAB and this tribunal as to why he was at the hospital, it becomes somewhat difficult to then credit his testimony regarding what he said while he was there. Further, though I acknowledge there was no evidence of an established friendship between Person B and Respondent, it is undisputed that Respondent had a conversation with this arrested auxiliary officer prior to speaking with his wife at the hospital. Given these circumstances, taken together with Respondent's obvious vested interest in the outcome of this matter and in providing testimony consistent with his Department interview and the lack of any evidence corroborating Respondent's account of his conversation with Person A, I am unable to credit his testimony.



Accordingly, I was persuaded that Respondent interfered with the Department's investigation by improperly speaking with Person A in an attempt to dissuade her cooperation, and is therefore Guilty of Specification 3.

With respect to Specification 1, official misconduct, it should be noted that the Department was required to prove Respondent intended to use his position as a police officer to obtain a benefit or deprive another person of a benefit by trying to prevent Person A from proceeding in a criminal case against her assailant. The benefit, for purposes of the official misconduct Penal Law statute used to charge Respondent (Penal Law § 195.00 [1]), does not necessarily have to be monetary and can be of an intangible nature. *See People v. Feerick*, 93 N.Y.2d 433, 448-49 (1993) (benefit was retrieval of lost police radio that had been left at narcotics-associated apartment); *Matter of Conde v. Kelly*, 118 A.D.3d 534, 535 (1st Dept. 2014) (officer intended to obtain benefit for fellow officer and friend by accessing confidential information from IAB computer system to confirm for the friend the disciplinary allegations against him).

This tribunal has already acknowledged that there was no definitive evidence of a friendship between Person B and Respondent. I further note that there are no phone records showing communications between them and that Respondent never explicitly asked for special treatment for Person B. Still, they worked in the same command and, by Respondent's admission, knew each other at least in passing. (DX 1 at p.11). Respondent spoke to Person B before going to see his wife. Having weighed all the evidence and testimony, the court finds that Respondent attempted to use his position to obtain a benefit for an auxiliary officer in his command by trying to persuade his wife not



to go forward with criminal assault charges. Accordingly, Respondent is Guilty of Specification 1.

**Specification 4**

Respondent stands charged with failing to make complete entries in his Activity Log regarding his visit to the hospital on August 12, 2012. Respondent's Activity Log has multiple entries for August 12, 2012 but no mention of anything related to Person A's assault. (DX 2). Respondent asserted that this was not the type of task he would denote in his Activity Log as it was not a "job you pick up or precinct assignment." He explained, "Me going to help on a language barrier or Inspector Buzzetti telling me to get him some information was not mandatory for me to put entries in my . . . memo book." (Tr. 368).

P.G. 212-08 outlines that the purpose of the Activity Log is to accurately record activities of uniformed members of the service and aid in the evaluation of such members. Members of the Department are to record, chronologically, assignments received, information pertinent to assignment and tasks performed. P.G. 212-08, page 1, paragraph 1(c). The provision does not provide any exemptions for certain types of jobs or assignments.

Respondent has claimed that he was there on order of his supervisor, Inspector Buzzetti. A job that is ordered by a supervisor is exactly the type of activity that warrants recording in a member's Activity Log. Responding to a situation that involved a legitimate arrest is also the type of activity that warrants recording in a member's Activity Log. I am not persuaded by Respondent's argument that this was not the type of job that merited being recorded in his Activity Log. In fact, his omission of this specific



event, on a date where he made several other entries in his Log, only bolsters the Department's position that Respondent wanted to hide his visit to the hospital because he was not there for a legitimate, work-related purpose.

Inspector Buzzetti, Respondent's own witness, testified that he would imagine that Respondent would have recorded that he responded to the hospital, even if he did not note the reason for doing so. (Tr. 306). Respondent himself has consistently maintained he went to the hospital on Department business. As such, his responding to the hospital should have been documented in his Activity Log.

Accordingly, Respondent is Guilty of Specification 4.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 2, 2001. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of all subject charges. The Department seeks dismissal, citing the severity of Specifications 1 and 3 where Respondent was charged with using his position as a member of the Department to convince an assault victim not to proceed with a criminal case.

There are few Department cases that are even somewhat analogous to the unique facts of the instant matter. In *Case No. 2010-2248* (August 2, 2011), a seventeen-year police officer with no prior disciplinary record negotiated a penalty of thirty (30) vacation



days, thirty (30) suspension days without pay, one year dismissal probation, forfeiture of all time/leave balances, and agreed to immediately file for vested-interest retirement for criminal association, witness tampering, wrongfully divulging of official Department business with an individual and impeding a Department investigation. In that case, Respondent had an acquaintance that was wanted for rape and went to the victim's home in an attempt to have her drop the charges and subsequently had someone drive the victim to the precinct to do so. The Respondent also provided misleading statements during an official Department interview.

In *Case Nos. 78040/02 & 79158/03* (October 13, 2004), a fourteen-year member, with no prior disciplinary record, forfeited twenty-four (24) suspension days already served, twenty-one (21) additional vacation days, and was placed on one year dismissal probation, for disobedience and interference with an arrest. The member spoke with a complainant in a domestic arrest where the complainant's son was the perpetrator. The complainant then stated that he wanted to drop the charges. The member spoke to the assistant district attorney from the arrest-processing room and tried to effectuate the complainant's purported request. After a sergeant instructed her to stop interfering, not to speak with the complainant and to resume taking her meal, she disobeyed and continued to interfere.

The Court notes that the cited cases, while similar in part, are more egregious than the instant matter in that those Respondents took more active steps to interfere with Department and DA investigations and in the latter case, continued to interfere after being ordered to stop. Accordingly, in the instant case, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be



held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings. In addition, I recommend that the Respondent forfeit thirty (30) vacation days.

**APPROVED**

JAN 07 2016  
*William J. Bratton*  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

Respectfully submitted,

*Nancy R. Ryan*  
Nancy R. Ryan  
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT  
CITY OF NEW YORK


From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT MAJER SALEH  
TAX REGISTRY NO. 929110  
DISCIPLINARY CASE NO. 2014-11186

Respondent was appointed to the Department on July 2, 2001. His last three annual evaluations were as follows: he received 4.0 ratings of "Highly Competent" in 2014 and 2012 and a 4.5 rating of "Highly/Extremely Competent" in 2013. He has received two medals for Meritorious Police Duty.

[REDACTED]

Respondent has no prior formal disciplinary history. He was placed on Level 2 Discipline monitoring on April 2, 2014 due to the subject charges and specifications in this case.

For your consideration.

  
Nancy R. Ryan  
Assistant Deputy Commissioner – Trials